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ATTORNEY FOR PLAINTIFF

CLERK OF THE
DISTRICT COURT
TERRY HALPIN

2020 JUN 23 P 2:08

FILED

BY DEPUTY

**MONTANA THIRTEENTH JUDICIAL DISTRICT
YELLOWSTONE COUNTY**

DV 20-0878

JOEL T. KOSTA

Cause No.:

Plaintiff,

Judge: **MARY JANE KNISELY**

vs.

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

**ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY**

Defendant.

Comes now the Plaintiff, Joel T. Kosta, by and through his attorney of record, Craig C. Hensel of the Hensel Law, PLLC, and for his Complaint against the Defendant, states and alleges as follows:

JURISDICTION AND VENUE

1. At all times relevant hereto, Plaintiff Joel T. Kosta was a resident of Yellowstone County, Montana.
2. Defendant Allstate Fire and Casualty Insurance Company (hereinafter "Allstate") is an insurance company transacting business in the State of Montana.

FACTS

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL
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EXHIBIT 1

- 1 3. Plaintiff purchased a policy of automobile insurance, specifically policy # 807440951
- 2 (hereafter "the policy") from Allstate which was in effect on April 22, 2019. This
- 3 policy of insurance included underinsured motorist (hereafter "UIM") coverage for
- 4 Plaintiff's truck in the amount of \$100,000.00.
- 5
- 6 4. Plaintiff continued to dutifully pay premiums for UIM coverage under the policy.
- 7
- 8 5. On or about April 22, 2019, Plaintiff was involved in a motor vehicle collision in
- 9 Billings Montana with an underinsured driver named James Trevathan.
- 10
- 11 6. Trevathan's negligence was the cause of the collision.
- 12
- 13 7. Plaintiff suffered serious injuries in the collision requiring extensive medical
- 14 treatment which continued for approximately one year.
- 15
- 16 8. Plaintiff suffered substantial wage loss in the months following the accident during
- 17 what should have been his busiest time of the year.
- 18
- 19 9. Allstate was made aware of the accident and opened up a UIM claim, claim No.
- 20 0542625579, on or about April 25, 2019.
- 21
- 22 10. Plaintiff has incurred medical expenses, may incur future medical expenses, has lost
- 23 earnings and earning capacity, has suffered a reduction in ability to enjoy life, a
- 24 change in the course of lifestyle, and has suffered physical pain and mental anguish.
- 25 These damages are covered by the terms of the UIM coverage of the policy.
- 26
- 27 11. Trevathan had liability coverage through Progressive Insurance in the amount of
- 28 \$100,000.00 at the time of the accident. Plaintiff's damages exceeded the available
- policy limits.

1 12. Plaintiff Joel Kosta settled with Progressive for policy limits of \$100,000.00 on
2 March 9, 2020. Allstate was advised of and consented to this settlement and waived
3 its subrogation rights.

4 13. Plaintiff submitted a UIM demand to Allstate on May 9, 2020.

5 14. Allstate responded with a counteroffer of \$0 on June 8, 2020.

6
7 **COUNT I – BREACH OF CONTRACT**

8 15. Plaintiff restates and realleges each and every allegation contained in this Complaint
9 as though fully set forth herein.

10 16. On April 25, 2019, Allstate was put on notice of a potential UIM claim.

11 17. On May 9, 2020, Plaintiff made a claim for UIM benefits.

12 18. On May 29, 2020, Allstate acknowledged informed Plaintiff's counsel that it was
13 evaluating the UIM claim.

14 19. On June 8, 2020, Allstate informed Plaintiff's counsel that it was rejecting Plaintiff's
15 UIM demand outright, and contended they owed Plaintiff nothing.

16 20. Allstate has breached the terms of the policy by failing to pay adequate UIM
17 coverage benefits for Plaintiff's injuries sustained in the collision of April 22, 2019
18 which were caused by an underinsured motorist.

19 21. As a result of Allstate's breach of the insurance agreement, Plaintiff has been
20 compelled to commence legal action to obtain bargained-for UIM benefits.

21
22 **PRAYER FOR RELIEF**

23 22. Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 24
25 a. For special and general damages in an amount to be determined by the jury;
26 b. For costs and fees of suit herein as allowed by law;
27

1 c. For attorney's fees incurred in prosecuting this action; and

2 d. For any such other and further relief as the Court deems just and proper.

3 **JURY DEMAND**

4 Plaintiff demands trial by jury in this matter pursuant to Mont. R. Civ. P. 38.

5
6
7
8 HENSEL LAW, PLLC

9
10 Dated this 23rd day of June 2020.

By: 


Craig C. Hensel
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint and Demand for Jury Trial was filed with the Clerk of Yellowstone County Justice Court Civil Division, Yellowstone County, Billings, Montana, Montana by the following means on this 23rd day of June 2020.

☐ U.S. Mail
☐ Federal Express
☒ Hand Delivery
☐ Facsimile
☐ Email

Yellowstone County Justice Court
217 N. 27th Street, Room 603
Billings, Montana
59101


Craig C. Hensel